

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**RESPONSE OF HATEM NAJI FARIZ TO THE GOVERNMENT’S
MOTION IN LIMINE REQUESTING THE COURT TO TAKE JUDICIAL
NOTICE OF CERTAIN TERRORIST DESIGNATIONS**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, hereby respectfully submits his response to the Government’s Motion in Limine Requesting the Court to take Judicial Notice of Certain Terrorist Designations (Doc. 985). In response, Mr. Fariz states:

On April 26, 2005, the government filed a motion in limine requesting that the Court take judicial notice of designations of the Palestinian Islamic Jihad (“PIJ”) as a specially designated terrorist (“SDT”) and as a foreign terrorist organization, and of certain individuals as SDTs, citing 44 U.S.C. § 1507.

While Mr. Fariz acknowledges the provisions of 44 U.S.C. § 1507, Mr. Fariz makes clear that he preserves his objection to the admission into evidence of any designations obtained in violation of the Due Process Clause, as more specifically set forth in previous motions (Docs. 301, 718), and on separation-of-powers, delegation, and bill of attainder grounds (Docs. 713, 753); *see also* Fed. R. Evid. 201 advisory committee notes (“The usual method of establishing adjudicative facts [that may then be judicially noticed] is through the

introduction of evidence, ordinarily consisting of the testimony of witnesses.”). Mr. Fariz also challenges, under the Fifth and Sixth Amendments, his inability as a defendant in this case to challenge the validity of the designation of the Palestinian Islamic Jihad-Shiqaqi Faction as a foreign terrorist organization, as provided in 8 U.S.C. § 1189(a)(8).

Mr. Fariz finally challenges the judicial notice of the designations on Confrontation Clause grounds. Mr. Fariz questions whether the Court may take judicial notice of an out-of-court statement that the government has designated the PIJ and certain individuals as terrorist (and likely relying on hearsay to arrive at that designation), without providing Mr. Fariz the opportunity for cross-examination. *See Crawford v. Washington*, 541 U.S. 36, 50 (2004) (“[T]he principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused.”); *see id.* at 51-52 (describing *ex parte* materials at issue, including “*ex parte* in-court testimony or its functional equivalent – that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine”). By designating a group or individual as a terrorist, the government is effectively making a statement that will be sought to be used in future litigation. *See id.* at 51-52. The government’s designation process, however, does not provide any notice or opportunity to be heard. Mr. Fariz therefore seeks to preserve any Confrontation Clause rights he may have in this case.

Should the Court take judicial notice of the applicable designations, Mr. Fariz would request the jury instruction that informs the jury “that it may, but is not required to, accept as conclusive any fact judicially noticed.” Fed. R. Evid. 201(g).

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Alexis L. Collins, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ M. Allison Guagliardo
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Assistant Federal Public Defender